

ILLINOIS COMMERCE COMMISSION

10-0668

As recounted in the Staff Report, the Staff conducted: an investigation, on November 25, 2009, of an incident that occurred on that date; and a compliance records audit on August 11, 2010, of the Bushnell Gas Utility operating records either

with respect to the November 25, 2009, incident or with respect to documentation in 2009 regarding liaison meetings with fire, police, and public officials or information required to be provided to excavators. Staff's review identified a number of alleged violations of the Sections of the Code of Federal Regulations incorporated by Part 590.

Incident Investigation – November 25, 2009

As related in the Staff Report, on November 25, 2009, Staff conducted an investigation of an incident that took place on that date to determine compliance with the requirements of the federal rules incorporated by reference and other relevant Commission rules adopted under authority of the Act. The Staff found the following:

- (1) 49 CFR §192.605(a) requires each operator to prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. Although the Bushnell Gas Utility had the appropriate manual, Staff's investigation determined that the Gas Utility failed to comply with 49 CFR Section 192.605(a) in that it did not follow the manual, identify the extent of the leak migration, and take appropriate corrective action necessary to control the flow of escaping natural gas.
- (2) 49 CFR §199.105(b) requires each operator to conduct post-accident drug testing of employees whose actions may have contributed to, or whose actions cannot be ruled out as contributing to, an incident. Staff's investigation established that the Bushnell Gas Utility failed to comply with 49 CFR Section 199.105(b) in that it did not conduct proper drug testing of employees who responded to the incident investigated within the time frame permitted.
- (3) 49 CFR §199.225(a) requires each operator to conduct post-accident alcohol testing for the presence of alcohol if the actions of employees may have contributed to, or the actions by employees cannot be ruled out as contributing to, an incident. Staff's investigation determined that the Bushnell Gas Utility failed to comply with 49 CFR Section 199.225(a) in that it did not conduct the proper post-accident alcohol testing of those employees who responded to the incident investigated within the time frame permitted.
- (4) 49 CFR §192.625(a) requires that combustible gas in a distribution line must be odorized at a concentration that is readily detectable at 1% gas in air or below. Staff's investigation determined that the Bushnell Gas Utility failed to comply with 49 CFR Section 192.625(a) in that it did not odorize the gas in the distribution system at a concentration that is readily detectable at 1% gas in air or below.

- (5) 49 CFR §192.741(c) requires the operator to inspect the regulator and the auxiliary equipment and take corrective action if there are indications of abnormally high or low pressure. Staff's investigation established that the Bushnell Gas Utility failed to comply with 49 CFR Section 192.741(c) in that it did not inspect pressure recordings and take the necessary actions when abnormally high pressure was indicated.

In the Staff Report, Staff recounts efforts that it made to contact the governmental authorities responsible for the operation of the Bushnell Gas Utility and the responses received.

Compliance Audit – August 11, 2010

As related in the Staff Report, on August 11, 2010, Staff performed a records audit inspection of the Bushnell Gas Utility. Staff found the following:

- (1) 49 CFR §192.615(b)(3) requires the operator to review employee activities to determine whether emergency procedures were effectively followed in each emergency. Bushnell Gas Utility could not provide Staff with documentation in compliance with 49 CFR Section 192.615(b)(3) that it reviewed employee activities in connection with the November 25, 2009 incident to determine if emergency procedures were effectively followed.
- (2) 49 CFR §192.615(c) requires each operator to establish and maintain liaison with appropriate fire, police and other public officials regarding the resources of government organizations and the abilities of operators to respond to gas pipeline emergencies; the types of gas pipeline emergencies for which notification is given; and how the operator and public officials can mutually assist to minimize hazards to life or property. Bushnell Gas Utility could not provide Staff with documentation in compliance with 49 CFR Section 199.615(c) that liaison meetings were conducted in 2009 with fire, police, and public officials.
- (3) 49 CFR §192.616(a)-(d) requires the operator to develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's Recommended Practice 1162 which must specifically include provisions regarding use of the one-call notification prior to excavation; possible hazards from unintended releases from a gas pipeline facility; physical indications that such a release may have occurred; and steps that should be taken in the event of a release, e.g., procedures for reporting. Bushnell Gas Utility could not provide Staff with documentation in compliance with 49 CFR Section 192.616(a)-(d) with respect to information required to be provided to excavators in 2009.
- (4) 49 CFR §192.747(a) requires the operator to check and service each valve, once per calendar year not to exceed 15 months, which may be

necessary for the safe operation of a distribution system and to take prompt remedial action to correct any valve found inoperable. Bushnell Gas Utility could not provide Staff with documentation in compliance with 49 CFR Section 192.747(a) demonstrating that required valve inspections were conducted in 2009.

The Staff Report presents a sufficient basis to initiate a proceeding to determine whether the Bushnell Gas Utility has violated the federal rules incorporated by reference in 83 Ill. Adm. Code 590. Section 7(a) of the Act states:

Any person violating paragraph (a) of Section 6 of this Act or any rule or order issued under this Act is subject to a civil penalty not to exceed the maximum penalties established by Section 60122(a)(1) of Title 49 of the United States Code for each day the violation persists.

The maximum penalty established by 49 USC 60122(a)(1) is \$100,000 for each violation. A separate violation occurs for each day the violation continues. The maximum civil penalty under this Section for a related series of violations is \$1,000,000.

The Commission, being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the subject matter herein and the parties hereto;
- (2) Bushnell, Illinois is a municipality subject to the Illinois Gas Pipeline Safety Act in that it is a person who engages in the transportation of gas or who owns or operates pipeline facilities;
- (3) Bushnell, Illinois should be made a respondent to this proceeding;
- (4) the Commission has incorporated as its rules specified federal rules relating to gas pipeline safety through its adoption of 83 Ill. Adm. Code 590;
- (5) the Staff Report from the Pipeline Safety Program provides a basis for the initiation of a proceeding to determine whether the Bushnell Gas Utility has failed to comply with the requirements of the Code of Federal Regulations that the Commission has incorporated by reference by its adoption of 83 Ill. Adm. Code 590;
- (6) a proceeding should be initiated pursuant to Section 7 of the Illinois Gas Pipeline Safety Act [220 ILCS 20/7] to determine whether the Bushnell Gas Utility has failed to comply with 49 CFR Sections 192.605(a); 192.615(b)(3); 192.615(c); 192.616(a)-(d); 192.625(a); 192.741(c); 192.747(a); 199.105(b), and 199.225(a);

- (7) the Staff Report dated November 1, 2010 should be made a part of the record of this proceeding.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that a proceeding be initiated to determine whether Bushnell, Illinois, as operator of the Bushnell Municipal Gas Utility, has failed to comply with the following requirements of the Code of Federal Regulations adopted by the Illinois Commerce Commission as required by Section 3 of the Illinois Gas Pipeline Safety Act and rules of the Commission adopted under the Act:

- (1) 49 CFR §192.605(a) requires each operator to prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response.
- (2) 49 CFR §199.105(b) requires each operator to conduct post-accident drug testing of employees whose actions may have contributed to, or whose actions cannot be ruled out as contributing to, an incident.
- (3) 49 CFR §199.225(a) requires each operator to conduct post-accident alcohol testing for the presence of alcohol if the actions of employees may have contributed to, or the actions by employees cannot be ruled out as contributing to, an incident.
- (4) 49 CFR §192.625(a) requires that combustible gas in a distribution line must be odorized at a concentration that is readily detectable at 1% gas in air or below.
- (5) 49 CFR §192.741(c) requires the operator to inspect the regulator and the auxiliary equipment and take corrective action if there are indications of abnormally high or low pressure.
- (6) 49 CFR §192.615(b)(3) requires the operator to review employee activities to determine whether emergency procedures were effectively followed in each emergency.
- (7) 49 CFR §192.615(c) requires each operator to establish and maintain liaison with appropriate fire, police and other public officials regarding the resources of government organizations and the abilities of operators to respond to gas pipeline emergencies; the types of gas pipeline emergencies for which notification is given; and how the operator and public officials can mutually assist to minimize hazards to life or property.
- (8) 49 CFR §192.616(a)-(d) requires the operator to develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's Recommended Practice 1162 which must specifically include provisions regarding use of the one-call

notification prior to excavation; possible hazards from unintended releases from a gas pipeline facility; physical indications that such a release may have occurred; and steps that should be taken in the event of a release, e.g., procedures for reporting.

- (9) 49 CFR §192.747(a) requires the operator to check and service each valve, once per calendar year not to exceed 15 months, which may be necessary for the safe operation of a distribution system and to take prompt remedial action to correct any valve found inoperable.

IT IS FURTHER ORDERED that Bushnell, Illinois, as operator of the Bushnell Municipal Gas Utility is made respondent to this proceeding.

IT IS FURTHER ORDERED that the Staff Report dated November 1, 2010 is made a part of the record of this proceeding.

IT IS FURTHER ORDERED that respondent appear at the offices of the Commission at the time and date specified by the Administrative Law Judge assigned to this proceeding.

IT IS FURTHER ORDERED that failure of the respondent to appear as ordered may result in findings that Bushnell, Illinois, as operator of the Bushnell Municipal Gas Utility has failed to comply with the enumerated requirements of the Code of Federal Regulations as incorporated by reference by the Illinois Commerce Commission and may result in the imposition of civil penalties pursuant to Section 7 of the Illinois Gas Pipeline Safety Act.

IT IS FURTHER ORDERED that this Order is not final; it is not subject to the Administrative Review Law.

By Order of the Commission this 23rd day of November, 2010.

(SIGNED) MANUEL FLORES

Acting Chairman